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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,267	01/23/2004	Tom Kusic		5781

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TOM KUSIC  
GPO BOX 932  
MELBOURNE, VIC, 3001  
AUSTRALIA

EXAMINER

COLLINS, TIMOTHY D

ART UNIT PAPER NUMBER

3643

DATE MAILED: 12/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/762,267

**Applicant(s)**

KUSIC, TOM

**Examiner**

Timothy D. Collins

**Art Unit**

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 5, 6, 13, 14, 25(5/6/13/14) and 26(5/6/13/14) is/are allowed.
- 6) ☐ Claim(s) 1-4, 7-12, 15-16, 25(1-4/7-12/15-16), and 26(1-4/7-12/15/16) is/are rejected.
- 7) ☐ Claim(s) 17-24, 25(17-24) and 26(17-24) is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☒ Certified copies of the priority documents have been received in Application No. 09/866639.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/23/04</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Specification***

1. The disclosure is objected to because of the following informalities: the number 31 of figure 11 is not disclosed in the specification. It appears that the applicant is showing the "protrusion" however this reference number does not appear in the specification.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4, 7-12, 15-16, 25(1-4/7-12/15-16), and 26(1-4/7-12/15/16) are rejected under 35 U.S.C. 102(b) as being clearly anticipated by USPN 4964593 to Kranz (hereinafter called 593).

a. Re claims 1-4, 593 discloses an aircraft (figure 1 at least) with a tube 3, which encircles part of the craft and is able to rotate as seen in figure 1. Also 593 discloses a means to rotate the tube relative to the encircled part of the craft as seen in figure 2 at number 9. 593 also discloses a plurality of fins 4 and 5, which pivot in the same/symmetric directions with respect to the tube (they both pivot clockwise or counterclockwise about the fins axes of rotation). Also 593

discloses at least in figure 5 that the fin rotating mechanism allows for the movement of one fin to move the other one.

b. Re claims 7 and 8, 593 discloses as seen in the figures, that the fins rotate in the same direction (clockwise or counterclockwise about the fins axes of rotation) relative to the tube.

c. Re claims 9-12,15 and 16, 593 discloses as seen in the figures at number 9 that an electric motor is the means to rotate the tube.

d. Re claims 25(1-4/7-12/15-16), 593 discloses the aircraft is a missile as seen in the first line of the background of the invention.

e. Re claims 26(1-4/7-12/15/16), 593 discloses inherently that the aircraft is an airplane in that it is said to be a missile, and a missile is an airplane because it flies through the air and is powered and also has wings and control surfaces.

4. Claims 1-4,7-12,15-16,25(1-4/7-12/15-16), and 26(1-4/7-12/15/16) are rejected under 35 U.S.C. 102(b) as being clearly anticipated by JP 406026799A to Watanabe (hereinafter called 799).

f. Re claims 1-4, 799 discloses an aircraft (figure 1 at least) with a tube 3, which encircles part of the craft and is able to rotate as seen in figure 1. Also 799 discloses a means to rotate the tube relative to the encircled part of the craft as seen in figure 6 at number 14. 799 also discloses a plurality of fins 11, which pivot in the same/symmetric directions with respect to the tube (they both pivot clockwise or counterclockwise about the fins axes of rotation). Also 799

discloses at least in figure 2 that the fin rotating mechanism allows for the movement of one fin to move the other one.

g. Re claims 7 and 8, 799 discloses as seen in the figures, that the fins rotate in the same direction (clockwise or counterclockwise about the fins axes of rotation) relative to the tube.

h. Re claims 9-12,15 and 16, 799 discloses as seen in the figures at number 14 that an electric motor is the means to rotate the tube.

i. Re claims 25(1-4/7-12/15-16), 799 discloses the aircraft is a missile as seen in the first line of the constitution of the invention.

5. Re claims 26(1-4/7-12/15/16), 799 discloses inherently that the aircraft is an airplane in that it is said to be a missile, and a missile is an airplane because it flies through the air and is powered and also has wings and control surfaces.

***Allowable Subject Matter***

6. Claims 5,6,13,14, 25(5/6/13/14) and 26(5/6/13/14) are allowed.

7. Claims 17-24,25(17-24) and 26(17-24) are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record all failed to show either alone and/or in combination a craft with rotating tube, with fins attached to the tube which are movable, and also a protrusion that rotates the tube by the action of the air over the protrusion. Also the

Art Unit: 3643

prior art did not show a craft with rotating tube with fins which pivot in directions such that if the tube were free and only one fin pivots that the tube would rotate in one direction and if only the other fin were to pivot the tube would rotate in the opposite direction.

### ***Conclusion***

9. The following are suggested formats for either a Certificate of Mailing or Certificate of Transmission under 37 CFR 1.8(a). The certification may be included with all correspondence concerning this application or proceeding to establish a date of mailing or transmission under 37 CFR 1.8(a). Proper use of this procedure will result in such communication being considered as timely if the established date is within the required period for reply. The Certificate should be signed by the individual actually depositing or transmitting the correspondence or by an individual who, upon information and belief, expects the correspondence to be mailed or transmitted in the normal course of business by another no later than the date indicated.

### **Certificate of Mailing**

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Art Unit: 3643

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(Date)

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Signature: \_\_\_\_\_

Registration Number: \_\_\_\_\_

Please refer to 37 CFR 1.6(d) and 1.8(a)(2) for filing limitations concerning facsimile transmissions and mailing, respectively.

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art discloses missiles with fins.

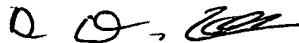
j. USPN 4029270

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy D. Collins whose telephone number is 571-272-6886. The examiner can normally be reached on M-F, 7:00-3:00, with every other Fri. off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3643

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Timothy D. Collins  
Patent Examiner  
Art Unit 3643